

# MEMORANDUM OF UNDERSTANDING

## BETWEEN

### NEW JERSEY HEALTH CARE FACILITIES FINANCING AUTHORITY

## AND

In recognition of their relationship and until such time as this Memorandum of Understanding ("Memorandum") may be superceded, the New Jersey Health Care Facilities Financing Authority (the "Authority") and (the "Institution"), do hereby mutually covenant and agree as follows:

- (1) That the Institution is applying to the Authority for possible assistance in the form of financing through Bonds or Notes of the Authority to be sold for the benefit of the Institution;
- (2) That the Institution has complied with and will maintain compliance with the Health Care Facilities Planning Act, (N.J.S.A. 26:2H-1 et seq.) and the New Jersey Health Care Facilities Financing Authority Act, (N.J.S.A. 26:2I-1 et seq.);
- (3) That the Institution shall remit to the Authority,
  - (a) concurrently with this agreement, a non-refundable initial fee as calculated using the estimated bond size and the Authority's fee schedule in effect at the time this Memorandum is executed. Upon closing, this fee will be adjusted using the actual bond size and the number of series of bonds issued. If there is no closing on the issue within a year from the date of this Memorandum, the initial fee shall be forfeited to the Authority and an additional fee payment will be required prior to any further Authority action, and
  - (b) an annual administrative fee as more specifically defined in the loan agreement or such other appropriate document to be entered into between the Authority and the Institution relating to the issuance of Bonds or Notes under this Memorandum;
- (4) With regard to any financial feasibility study used to enhance the marketing of bonds by any type of distribution to potential purchasers of bonds, the Institution shall deliver or cause to be delivered to the Authority a letter (commonly referred to as a "privity letter") from the preparer of the financial feasibility study stating that (i) such preparer or firm understands and agrees that the Institution plans to provide the Authority with a copy of the financial feasibility study and any report issued in connection therewith, (ii) such preparer or firm further understands that the Authority intends to rely upon the financial feasibility study and any report issued in connection therewith, and that the Institution intended for the Authority to so rely and (iii) such preparer or firm knew that the Authority intended to rely upon such financial feasibility study and any report issued in connection therewith. In addition, the cost of such study will be borne by the Institution;

- (5) That the Institution shall be responsible for any costs, fees or other expenses incurred directly by the Institution as well as any costs, fees or other expenses incurred by the Authority relating to the Institution. Such expenses may include, but shall not be limited to, legal fees, including Authority bond counsel and State Attorney General fees and expenses specific to the transaction, costs of printing of certain documents which relate specifically to the Institution, and fees incurred to obtain ratings for the Bonds or Notes to be sold for the benefit of the Institution;
- (6) That the Institution may be reimbursed by the Authority for certain of such expenses, if the Authority and the Institution shall so agree, in writing, but any such reimbursement may be made only from monies of the Authority received as proceeds from the issuance of Bonds or Notes of the Authority sold for the benefit of the Institution;
- (7) The method by which bonds will be sold and the firms which will provide investment banking/financial advisory/placement agent/co-manager or other services will be selected in accordance with Authority policies and procedures established to implement Executive Order No. 26 (Whitman), a copy of which is enclosed as Exhibit A;
- (8) That, unless otherwise mutually agreed upon, all fees or expenses for services provided by financial advisors, underwriters or investment bankers, shall be the liability of the Institution, provided, however, that such costs may be payable by the Authority from the proceeds of any Bonds or Notes of the Authority sold for the benefit of the Institution. It is expected that no payment for services of this type shall be required unless the transaction shall close;
- (9) That the Institution will complete and submit to the Authority the Financing Questionnaire included as Exhibit B. Upon submission, the Institution will certify that the information contained in the Financing Questionnaire is true and complete in all material respects as of the date thereof. Further, prior to the closing of the issue, the Institution shall deliver or cause to be delivered to the Authority a letter from the accounting firm providing an opinion on the audited financial statements required by Exhibit B, to the effect that (i) such firm has agreed with the Institution that such audited financial statements would be made available to the Authority, (ii) that such firm knew that the Authority intended to rely on such statements; and (iii) that the Authority may rely on such statements as if they were addressed to the Authority;
- (10) That nothing contained herein shall be construed as an agreement or indication of intent on the part of either the Authority or the Institution that the Authority shall proceed to sell or issue Bonds or Notes of the Authority by competitive or negotiated sale via public offering or private placement;
- (11) That the parties hereto agree that this Memorandum sets forth legal and binding obligations of both the Authority and the Institution, but is not intended to preclude continuing negotiations and review of documentation between the parties which may result in a new agreement between the parties; and
- (12) That the parties further agree that this Memorandum shall be governed by the laws of the State of New Jersey.

The Authority and the Institution each will signify their acceptance of the terms and conditions of this Memorandum by causing its execution, in duplicate, in the appropriate spaces provided below.

NEW JERSEY HEALTH CARE FACILITIES  
FINANCING AUTHORITY

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Executive Director

NAME OF INSTITUTION

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_